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From:

Sent: Wednesday, July 23, 2008 2:40 PM

To:

Cc:

Subject: RE: Can you read this for me

Got it , but my concern is not about what you wrote but whether the IRS has the authority to answer the questions posed. I don't believe we do as whether a worker is in a coverage group for purposes of section 218 of the social security act is within the jurisdiction of the Social Security Administration. Of course we can provide our own analysis of the question, but in litigation we would be supporting our position based upon the state law, modifications to the 218 and how in our view it all fits together -- there is nothing in the Code that governs the provisions of a 218. The Code includes sections 3121(d)(4) and (b)(7)(E) which specify that if a worker performs services included under a section 218 agreement that worker is an employee engaged in employment and is subject to FICA. Whether the services are included in the 218 agreement is up to SSA.



Also, as a technical matter, if these workers are not treated as covered by the section 218 agreement then they are governed by the mandatory FICA provisions. That means they are subject to FICA, unless they are covered by a retirement system within the meaning of the regulations under section 3121(b)(7)(F). It's important to understand what the possible results are so that there could be some discussion with about resolution and resources etc.